

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)

WILLIE L. JACKSON,)

Complainant,)

and)

BOARD OF EDUCATION OF THE)
CITY OF CHICAGO, NORTH,)

Respondent.)

Charge No. 2006CA1217
EEOC No. 21BA52745
ALS No. 07-077

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **December 9, 2009**, has become the Order of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 13th day of October 2010

Commissioner Rozanne Ronen

Commissioner Nabi Fakhroddin, P.E., S.E.

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CITY OF CHICAGO,)	
NORTH,)	Judge Reva S. Bauch,
)	Presiding
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on liability and damages held on April 27th- 28th, 2009. Both Complainant and Respondent were represented by counsel. The parties filed post-hearing briefs. This matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Findings of Fact

Those facts marked with an asterisks (*) are uncontested by the parties based on the pre-hearing memorandum. The remaining facts are based on the preponderance of the evidence adduced at the public hearing. Factual assertions made at the public hearing, but not addressed herein, were determined to be either unproven by a preponderance of the evidence or immaterial.

1. Complainant filed a complaint alleging Respondent discriminated against him because of his race and age when it failed to hire him for the automotive technology teaching position at Tilden Career Academy High School ("Tilden").
2. Respondent, Board of Education of the City of Chicago, is a legal entity organized pursuant to the laws of the state of Illinois to manage and operate the Chicago Public School system.*
3. At all times relevant to this action, Phyllis Hammond ("Hammond") was employed by Respondent as the Principal at Tilden.*
4. Phyllis Hammond is an African-American female; her year of birth is 1951.*
5. Since 2006, Alfred J. Brown ("Brown") has been employed by Respondent as Director of Career Cluster Programs.
6. Education to Careers ("ETC") is one of the vocational programs Brown oversees.
7. Brown is an African-American male; his year of birth is 1947.
8. Sometime after July 2004, Brown had a discussion with Complainant regarding jobs.
9. The Tilden automotive technology program is managed by ETC.
10. ETC teachers are hired to teach vocational skills to students attending Respondent's high schools.
11. ETC seeks to employ teachers who have recent work experience in the vocation for which they are hired to teach, as well as industry certifications and contacts.
12. During the relevant time period, Raymond Prendergast ("Prendergast") was the ETC Program Manager for the Respondent's automotive programs.
13. Complainant is an African-American male; his year of birth is 1954.*
14. Since 1979, Complainant has possessed a Bachelor of Science degree in Industrial Technology from Mississippi Valley University.*

15. At all relevant times in this matter, Complainant was certified by the Illinois State Board of Education ("ISBE") to teach high school level courses in automotive technology.*
16. Respondent employed Complainant as an appointed automotive technology/ auto shop teacher at various Chicago Public Schools from February 2, 1987 to June 30, 2004.*
17. Since 1994 and at all relevant times, Complainant was Automotive Service Excellence ("ASE") certified in one of eight certification areas.
18. At all relevant times, Complainant had industry contacts, as well as management skills.
19. Complainant does not speak Spanish.
20. Complainant's performance appraisals were generally "satisfactory" until 2000-2001.
21. Complainant's 1991-1992 performance appraisal was "excellent."
22. Complainant's performance appraisals were "low satisfactory" in 2000-2001, 2002-2003, and 2004-2005.
23. Effective June 30, 2004, Respondent displaced Complainant from a teaching position at Westinghouse High School due to a position closure.*
24. At all times relevant to this action, Lauren McClellan ("McClellan") was employed by Respondent in its Department of Human Resources Teacher Recruitment Unit.
25. McClellan is an African American female; her year of birth is 1965.
26. McClellan does not recall if Complainant discussed an automotive teaching position at Tilden with her.
27. Complainant did not find McClellan very helpful.

28. Effective July 1, 2004, Complainant's employment status changed to "reassigned teacher" in accordance with Respondent's *Policy Regarding Reassignment and Layoff of Regularly Certified and Appointed Teachers (Reassigned Teacher Policy)*.*
29. From December 2004 to May 15, 2005, Complainant worked for Respondent as a day-to-day substitute teacher at Tilden.
30. McClullan assisted Complainant in getting work at Tilden as a day-to-day substitute teacher.
31. Complainant was not placed at Tilden on an interim appointment during the time he worked at Tilden.
32. After being displaced, Complainant submitted his resume to many people, including the then ETC Program Manager, Melissa Barbara.
33. Norbert Zook ("Zook"), the only automotive technology teacher at Tilden, retired from that position effective June 30, 2005.
34. In or around June 2004, Complainant learned that Zook planned to retire in 2005.
35. In or around December 2004, Complainant told McClullan that Zook would be leaving and he asked McClullan to forward his resume to the appropriate person.
36. From 2001 up to the effective date of Zook's retirement, there were no teaching vacancies in Tilden's automotive technology program.
37. Prior to his retirement, Zook recommended that Principal Hammond hire Ruben Martinez ("Martinez") to replace him as Tilden's automotive technology teacher.
38. Complainant discussed his interest in Zook's automotive technology teaching position with Hammond.
39. Hammond does not recall if Complainant discussed Zook's job with her, or that Complainant gave her his resume/application.
40. Hammond maintains a file with resumes and applications.

41. Hammond checked her resume file and did not have Complainant's resume or information in the file.
42. Martinez is a Hispanic male; his year of birth is 1980.
43. Martinez was Zook's former student; he graduated from Tilden in 1998.
44. Since May 1998 and up until the time he was hired to teach at Tilden, Martinez consistently worked in the automotive industry as an auto technician, auto repairman, brake specialist and engine performance specialist.
45. Since approximately 2002, Martinez has been ASE certified in two of the eight certification areas.
46. Since his graduation from Tilden, Martinez also received training in auto pollution testing, auto air conditioning and auto inspections.
47. Prior to being hired by Respondent to teach, Martinez did not have classroom teaching experience.
48. Principal Hammond considered Zook's recommendation invaluable because of his many years of excellent service to the Tilden automotive program.
49. In Hammond's opinion, Zook "had done a stellar job" of building the reputation of the Tilden automotive program in the neighboring community and the Chicago Public School system.
50. Principal Hammond believed that Martinez had the same passion as Zook for the Tilden auto shop and for the Tilden school.
51. Hammond felt that Martinez's continuing service as a volunteer supported her belief that Martinez had a passion similar to Zook's.
52. In spring 2004, Principal Hammond learned Zook may be retiring in the coming year.
53. In late April or May 2005, Principal Hammond received paperwork notifying her that Zook was retiring effective June 30, 2005.

54. Martinez knew, in advance, that Zook was planning to retire.
55. Prior to Zook giving official notice of his resignation, Martinez sought information from Zook and ETC employees on the necessary certifications and steps he needed to take to fill Zook's teaching position.
56. In April 2005, Martinez had completed his paperwork for the Respondent and notified Prendergast at ETC.
57. Zook helped Martinez through his application process for the Tilden automotive technology teaching position.
58. Principal Hammond's job responsibilities include selecting candidates to fill teaching positions at Tilden, and submitting written recommendations for the hire of her selected candidates to the appropriate departments at Respondent.
59. Principal Hammond was not, and is not, responsible for verifying the qualifications or credentials of a selected teacher candidate.
60. In May 2005, Principal Hammond conducted a formal interview with Martinez where they discussed his qualifications to teach automotive technology.
61. Based on her meetings, observations and interviews with Martinez, Hammond believed he was competent to teach automotive technology.
62. On or about May 25, 2005, Principal Hammond sent a letter to Prendergast, Respondent's ETC Program Manager, recommending that Martinez be hired to fill Tilden's automotive technology teaching position.
63. At the time of her recommendation, Hammond knew that Martinez was not ISBE certified, and she did not know if he would obtain the ISBE certification.
64. Prendergast had the authority to reject Hammond's selection of Martinez to fill the automotive teaching position, if he determined Martinez was not qualified for the position.
65. Prendergast did not reject Hammond's selection of Martinez.

66. After a Principal makes a written hiring recommendation for an ETC teacher candidate, ETC collects the necessary documentation from the candidate and forwards the certification application and supporting documentation to the ISBE.
67. An applicant with less than 60 hours of college credit who is seeking an ISBE Temporary Provisional Certificate must submit documentation to ISBE which shows that s/he has a minimum of 8,000 work hours in the industry for which the certificate is sought.
68. Martinez obtained the necessary documentation to show that he had worked the minimum 8,000 hours in the automotive industry.
69. ETC forwarded Martinez's application and supporting documentation to the ISBE.
70. Zook's retirement was effective on June 30, 2005.
71. Effective August 15, 2005, the ISBE issued Martinez a Temporary Provisional Vocational Teaching Certificate which qualified him to teach auto mechanics and automotive technology.
72. Based on the ISBE certificate issued to Martinez, Respondent's Department of Human Resources found him qualified for hire as a Temporarily Assigned Teacher ("TAT") for Tilden's automotive technology position.
73. ETC notified Principal Hammond that Martinez was eligible for hire as Tilden's automotive technology teacher.
74. Effective August 31, 2005, Respondent hired Ruben Martinez to fill the Tilden automotive technology teaching position as a TAT.
75. When Respondent hired Martinez, he was certified by the ISBE to teach high school level courses in auto mechanics and automotive technology.
76. Respondent complied with its pre-hire procedures for validating Martinez's credentials.

77. For a short period of time after Martinez was hired by Respondent, Zook continued to work as Martinez's mentor at Tilden's automotive technology program.

78. When Principal Hammond recommended Martinez for the automotive teaching position, she did not know Complainant's age.

79. Principal Hammond learned of Complainant's age at the public hearing.

80. Principals who work for Respondent regularly make hiring recommendations for positions at their respective schools.

81. Respondent Board of Education has authority to hire teachers.

82. Tilden has a significant Spanish-speaking student population.

83. Martinez is bilingual; he speaks fluent Spanish.

84. When evaluating his credentials, Principal Hammond considered Martinez's Spanish-speaking skills "a plus."

85. Respondent's decision to hire Martinez for the automotive technology teaching position was not based on race or age.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Principal Hammond articulated legitimate business reasons, unrelated to race or age, for recommending Ruben Martinez to fill Tilden's automotive technology teaching position.

Discussion

Generally, there are two main methods to prove an employment discrimination case, direct and indirect. Either one or both may be used. *Sola v. Human Rights*

Comm'n, 316 Ill. App.3d 528 (2000). Since there is no direct evidence in this case, the indirect analysis will be used. The method of proving a charge of discrimination through indirect means was described in the U.S. Supreme Court case of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and is well-established.

First, the Complainant must establish a *prima facie* showing of discrimination against him by Respondent. If he does, Respondent must articulate (not prove) a legitimate, non-discriminatory reason for its actions. If this is done, the Complainant must prove by a preponderance of the evidence that the articulated reason advanced by the Respondent is a pretext. *Texas Dep't. of Community Affairs v. Burdine*, 450 U.S. 248, 254-55 (1981). This method of proof has been adopted by the Illinois Human Rights Commission and approved by the Illinois Supreme Court. *Zaderaka v. Human Rights Comm'n*, 131 Ill. 2d 172 (1989).

In general, the elements of a *prima facie* case for race and age discrimination in a failure to hire case are: (1) Complainant is a member of a protected class; (2) Complainant applied and was qualified for a position for which Respondent was seeking an applicant; (3) despite his qualifications, Complainant was rejected; and (4) Respondent hired a person of similar or lesser qualifications who is not in the protected class to fill the position. *Allen and Illinois Dep't. of Transportation, IHRC, ALS No. S-7835, June 2, 1998*.

I find that Complainant has met his burden as to the elements for a *prima facie* case. In any event, at the public hearing, Respondent articulated a legitimate, non-discriminatory reason for not hiring Complainant, but rather for opting to hire someone else. Once such a reason is articulated, there is no need for a *prima facie* case. Instead, at that point, the decisive issue in the case becomes whether the articulated reason is a pretext for discrimination. *Clyde and Caterpillar, Inc.*, 52 Ill. H.R.C. Rep. 8

(1989), *aff'd sub nom Clyde v. Human Rights Comm'n*, 206 Ill. App.3d 283 (4th Dist.1990).

Principal Hammond articulated several legitimate, nondiscriminatory reasons for her decision to recommend Mr. Martinez for the automotive teaching position created by Mr. Zook's retirement. Her reasons included: (a) after several meetings and a formal interview with Martinez, Principal Hammond believed Martinez was competent; (b) Martinez was a former student at Tilden; (c) Martinez had volunteered his time to assist Tilden automotive students; (d) Hammond had previously observed Martinez counseling Tilden automotive students during a engine-building competition in Joliet, Illinois; (e) Zook, a teacher Hammond admired greatly, had recommended Martinez; (f) Martinez had experience in the automotive field; (g) Martinez had assisted in developing Tilden's partnerships with the community and local businesses; (h) Martinez was willing to complete coursework to obtain a Type 9 teaching certificate; (i) Hammond believed Martinez exhibited a passion for teaching; (j) Zook assured Hammond that he would work with his replacement to maintain program standards; and (l) Martinez was ASE certified in two areas.

After Principal Hammond made her recommendation to the ETC program, Mr. Prendergast, Respondent's ETC Program Manager, found Martinez had met the requirements for the ISBE Temporary Provisional Vocational Teaching Certificate, which Martinez needed to teach at Tilden. Thereafter, ETC personnel forwarded Martinez's application to the ISBE. The ISBE issued Martinez a Temporary Provisional Vocational Teaching Certificate. Based on that certificate, Respondent's Department of Human Resources found Martinez eligible for hire as a Temporary Assigned Teacher at Tilden. Respondent then hired Martinez.

Complainant argues that Respondent's articulated reasons for its hiring decision are pretextual. To support this conclusion, Complainant states that Complainant had

applied for the position and was more qualified than Martinez. Complainant further states that Martinez was not qualified for the position.

At the outset, I find that Principal Hammond and some of Respondent's employees in ETC and Human Resources probably knew that Complainant was interested in the Tilden automotive technology teaching position. However, I also find that it is irrelevant whether or not Respondent was aware of Complainant's interest, or whether Complainant actually applied for the Tilden position. Principal Hammond had discretion to recommend for hire any candidate she wished for teacher positions at her school, as long as her decisions were non-discriminatory. Hammond testified to several legitimate, non-discriminatory reasons for recommending Martinez. Once Hammond made her hiring recommendation, Respondent's ETC Program Manager handled the credential and certification issues. There was no evidence that Mr. Prendergast, Respondent's ETC Program Manager, had discriminatory motives against Complainant when he opined that Martinez was qualified for the ISBE certification. Finally, Respondent did not hire Martinez until he officially obtained the ISBE certification necessary for teaching at Tilden.

Complainant also argues that Martinez was not qualified because he did not have the ISBE Provisional Vocational Teaching Certificate at the time Principal Hammond made her hiring recommendation to Respondent. Although this is true, Hammond testified that Martinez planned to obtain the ISBE certification. The record is clear that Martinez did, in fact, obtain the ISBE Provisional Vocational Teaching Certification prior to Respondent officially hiring him for the job.

In addition, Complainant argues that Martinez was not qualified for the Tilden teaching position. Complainant argues that when comparing his qualifications with those of Martinez, one must conclude there was discrimination. I disagree. The evidence showed that both the Complainant and Martinez were at least minimally qualified for the

position. Each had strengths and weaknesses. Principal Hammond had discretion to select her teachers. She articulated several legitimate, business reasons for her recommendation of Martinez.

Complainant may correctly feel that it was unfair for Principal Hammond and the Respondent to exclude him from meaningful consideration for the Tilden teaching position. Unfairness, however, is not equivalent to a reasonable inference of unlawful discrimination. *Kotsilieris and M & M Mars Co., IHRC, ALS No. 8319, Oct. 9, 1996.* The evidence clearly indicated that Martinez had "connections" and "help" in the application process. Notwithstanding, the evidence was ample to support that he was at least minimally qualified for the job. Under the Illinois Human Rights Act, favoritism alone does not equate to discrimination.

It is also true that the evidence showed Complainant had many positive qualifications. He had approximately 23 years of classroom teaching experience; he had all the proper certifications. On the other hand, Respondent correctly pointed out that Complainant was not necessarily more qualified than Martinez. At the time of selection, Complainant's most recent performance appraisals were ranked "low satisfactory." Complainant also admitted that in 1988 the principal at DuSable High School recommended that he leave because the material Complainant was attempting to teach was inappropriate for the students.

In sum, the Commission does not sit as a "super-personnel" agency to second guess the correctness of employer decisions. *Fitzgerald and State of Illinois Dep't. of Public Aid, IHRC, ALS No. S-8189, Nov. 7, 1997.* Absent proof of unlawful discrimination, the Commission will not substitute its business judgment for the Respondent's decisions. *Bd. of Education v. Human Rights Comm'n, 135 Ill. App.3d 206 (5th Dist. 1985); see also Havlin and Belleville Area College, IHRC, ALS No. S-8255, Oct. 2, 1997 and Kotsilieris and M & M Mars Co., IHRC, ALS No. 8319, Oct. 9, 1996 (an*

employer may take its actions for good reason, bad reason, reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason; the correctness of the reason is not important as long as there was a good faith belief by Respondent in its decision).

Complainant also points out that Martinez speaks Spanish and Complainant does not. I do not find that this fact leads to the conclusion that Respondent failed to hire Complainant based on race discrimination. Principal Hammond testified that although she found it a “plus” that Martinez spoke Spanish, she did not recommend him for that reason alone. Without more, Hammond’s testimony does not indicate that her decision was based on discriminatory factors, especially as to race. An employer can legally consider subjective factors in making its hiring decisions, as long as discrimination is not a motive for those considerations. *Foley v. Illinois Human Rights Comm’n*, 165 Ill. App.3d 594 (5th Dist. 1988).

Principal Hammond articulated several legitimate, non-discriminatory reasons why she felt Martinez was competent for the job. In fact, Hammond specifically testified that she would not have declined to recommend a qualified teacher who did not speak Spanish. In addition, although there was testimony that Tilden has a substantial Spanish speaking student population, there was no convincing evidence that Respondent was seeking to increase the number of its Spanish-speaking teachers at Tilden. Further, there was no evidence that Respondent’s ETC personnel processed Martinez’s application because he was bilingual.

Finally, Complainant argues that Respondent did not hire Complainant because of his age. As stated, even if Principal Hammond knew Complainant was interested in the position, she had discretion to consider and recommend for hire the teacher candidate of her choice. Nonetheless, Principal Hammond testified that she did not know Martinez’s or Complainant’s ages at the time she made her recommendation. Moreover,

although Principal Hammond testified that Martinez was a “cheaper” hire, without more, that does not prove she did not hire Complainant based on his age. Principal Hammond gave several non-discriminatory, legitimate business reasons for her recommendation. While use of subjective factors in making employment decisions may be a mask for discrimination, I find no evidence that this is so in this case. An employer can legally consider subjective factors in making its hiring decisions, so long as discrimination is not a motive for those considerations. *Foley at 594.*

In sum, I find that Complainant has failed to demonstrate by a preponderance of the evidence that Respondent’s articulated reason is pretextual. Accordingly, he failed to prove that Respondent discriminated against him based on race and age.

Recommendation

I recommend that the Commission enter an order dismissing the complaint, and the underlying charge number 2006CA1217, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
**REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: December 9, 2009